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OPEN MEETING ITEM

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ORIGINAL

JEFF HATCH-MILLER
MIKE GLEASON
KRISTIN K. MAYESBRIAN C. MCNEIL
Executive Secretary

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ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION
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DATE: October 16, 2003

DOCKET NOS: SW-01303A-02-0628 and W-01303A-02-0629

TO ALL PARTIES:

Enclosed please find the recommendation of Assistant Chief Administrative Law Judge Dwight D. Nodes. The recommendation has been filed in the form of an Order on:

ARIZONA-AMERICAN WATER COMPANY
(AMEND DECISION NO. 65800)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

OCTOBER 27, 2003

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Open Meeting to be held on:

NOVEMBER 4 and 5, 2003

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Secretary's Office at (602) 542-3931

Arizona Corporation Commission

DOCKETED

OCT 16 2003

DOCKETED BY	<i>CK</i>
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BRIAN C. MCNEIL
EXECUTIVE SECRETARY

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 MARC SPITZER, Chairman
4 WILLIAM A. MUNDELL
5 JEFF HATCH-MILLER
6 MIKE GLEASON
7 KRISTIN K. MAYES

8 IN THE MATTER OF ARIZONA-AMERICAN
9 WATER COMPANY – AGUA FRIA DIVISION
10 SEWER HOOK-UP FEE TARIFF REVISIONS.

DOCKET NO. SW-01303A-02-0628

11 IN THE MATTER OF ARIZONA-AMERICAN
12 WATER COMPANY – AGUA FRIA DISTRICT –
13 WATER FACILITIES HOOK-UP FEE TARIFF
14 REVISIONS.

DOCKET NO. W-01303A-02-0629

DECISION NO. _____

ORDER AMENDING
DECISION NO. 65800

15 Open Meeting
16 November 4 and 5, 2003
17 Phoenix, Arizona

18 **BY THE COMMISSION:**

19 On August 16, 2002, Arizona-American Water Company, Agua Fria District (“Arizona-
20 American” or “Company”), filed proposed tariff revisions with the Arizona Corporation Commission
21 (“Commission”). The Company proposed to expand the applicability of its water (Docket No. W-
22 01303A-02-0629) and wastewater (Docket No. W-01303A-02-0628) hook-up fee tariffs to the
23 entirety of its Agua Fria District. Currently, the hook-up fee tariffs are applicable only to new service
24 connections within the portion of the Company’s Agua Fria Certificate of Convenience and Necessity
25 (“CC&N”) area known as “Verrado” (formerly known as “Whitestone”).

26 In Decision No. 65201 (September 20, 2002), the Commission suspended the Company’s
27 tariff filing for 120 days. In Decision No. 65536 (January 24, 2003), the Commission granted an
28 additional 90-day suspension, through and including April 12, 2003, to allow the Hearing Division to
review this matter.

On April 9, 2003, the Commission issued Decision No. 65800, which granted the
Commission’s Utilities Division Staff’s (“Staff’s”) Motion to Dismiss. Decision No. 65800 also

1 directed Staff to review and make a recommendation regarding the water and wastewater hook-up fee
2 tariffs in the Company's pending rate case (Docket No. WS-01303A-02-0870).

3 On June 25, 2003, the Commission conducted a Special Open Meeting to discuss whether
4 Decision No. 65800 should be reconsidered or amended pursuant to A.R.S. §40-252. Following a
5 discussion of the issue, the Commission ordered the Hearing Division to develop a record on the hook-up
6 fee tariff issue prior to making a further recommendation to the Commission.

7 On July 3, 2003, a Procedural Order was issued directing Staff to file a Staff Report by
8 August 8, 2003 on the hook-up fee tariff issues raised by Arizona-American. Responses to the Staff
9 Report were ordered to be filed by no later than August 22, 2003.

10 On July 23, 2003, the Residential Utility Consumer Office ("RUCO") filed a Motion to
11 Intervene. RUCO was granted intervention by Procedural Order issued August 14, 2003.

12 Staff filed its Staff Report on August 8, 2003. Arizona-American filed a Response to the
13 Staff Report on August 15, 2003. RUCO did not file a response.

14 * * * * *

15 Having considered the entire record herein and being fully advised in the premises, the
16 Commission finds, concludes, and orders that:

17 **FINDINGS OF FACT**

18 1. By its applications in these consolidated cases, Arizona-American seeks to establish
19 water and wastewater facilities hook-up fees so that the Company can "equitably apportion the costs
20 of constructing additional facilities" to provide water production, water and wastewater treatment,
21 transmission, storage, pressure, flow, effluent disposal, and sludge disposal among all new service
22 connections in the Company's Agua Fria Division.

23 2. In Decision No. 64307 (December 28, 2001), the Commission approved a CC&N
24 extension application for Citizens Communications Company's (now Arizona-American's) Agua Fria
25 District to include an 8,800 acre area in the town of Buckeye, Arizona now known as Verrado. As
26 part of that Decision, the Commission approved tariffs, in accordance with Staff's recommendation,
27 for water and wastewater hook-up fees for the Verrado area of the Agua Fria District.

28 3. Arizona-American's applications in these consolidated proceedings seek to impose

1 hook-up fees across the remaining portion of the Agua Fria District consistent with those now in effect for
2 Verrado. The Company intends to treat the amounts collected under these tariffs as contributions in
3 aid of construction ("CIAC"), consistent with the requirement in Decision No. 64307 that the
4 Verrado hook-up fees be treated as CIAC.

5 4. Article XV, Section 3, of the Arizona Constitution states that the Commission "shall
6 have full power to, and shall, prescribe just and reasonable classifications to be used and just and
7 reasonable rates and charges to be made and collected, by public service corporations within the State
8 for service rendered therein." Section 14 of Article XV requires that the Commission "shall, to aid it
9 in the proper discharge of its duties, ascertain the fair value of the property within the State of every
10 public service corporation doing business therein."

11 5. In Decision No. 65800, we agreed with Staff that a proposed rate, as that term is used
12 in Article XV of the Arizona Constitution, should be given a broad interpretation. Because Arizona-
13 American's proposed hook-up fees require an amount to be paid for a service, we concluded that the
14 hook-up fees constitute a "rate" under Article XV and therefore, there must be a "fair value"
15 determination prior to approval. Accordingly, we granted Staff's Motion to Dismiss the Company's
16 application and ordered Staff to review the proposed hook-up fees in the Company's pending rate
17 case.

18 6. Although Staff originally argued that the hook-up fee issue must be considered in the
19 context of a rate case, after further review Staff now believes that setting rates for hook-up fee tariffs
20 does not require a new fair value finding. Staff states that the Company's proposed hook-up fee tariffs are
21 appropriate and may be approved by an amendment to Decision No. 65800.

22 7. In support of its position, Staff contends that hook-up fee tariffs should be considered
23 an exception to the fair value finding requirement set forth in the Arizona Constitution. Staff asserts
24 that this is an issue of first impression for the Commission because the court opinions in *U.S. West*
25 *Communications, Inc. v. Arizona Corporation Comm'n*, 201 Ariz. 242, 34 P.3d 351 (2001) ("*US*
26 *West II*") and *Residential Utility Consumers Office v. Arizona Corporation Comm'n*, 199 Ariz. 588,
27 20 P.3d 1169 (App. 2001) ("*Rio Verde*") do not address hook-up fees or similar tariff charges.

28 8. In *US West II*, the Arizona Supreme Court held that "[u]nambiguous constitutional

1 language” must be given its “plain meaning and effect” and a “determination of fair value is
 2 necessary with respect to a public service corporation.” *US West II*, 201 Ariz. At 245. The Court
 3 held, therefore, that the Commission must set rates after making a fair value finding, even in a
 4 competitive market situation. However, the Court also recognized that a fair value determination
 5 need not be plugged into a “rigid formula” for purposes of setting rates. The Court indicated that the
 6 Commission has “broad discretion” in determining the weight to be given to a fair value finding. *Id.*
 7 at 246.

8 9. The Arizona Court of Appeals decision in the *Rio Verde* case also addressed the
 9 Commission’s Constitutional rate-making authority. In that case, the Court of Appeals held that the
 10 Commission may, in limited circumstances, set rates without first ascertaining a utility’s fair value
 11 rate base. The Court stated that the fair value exception exists when the Commission sets rates on an
 12 interim basis, or pursuant to an automatic adjustment clause. *Rio Verde*, 199 Ariz. At 591. However,
 13 in deciding whether a proposed surcharge constituted an “interim rate” or an “automatic adjustment,”
 14 the Court cautioned that interim rates are subject to compliance with specific criteria¹ and imposition
 15 of an automatic adjustment usually requires consideration in the context of a full rate case hearing.
 16 *Id.* at 591-593.

17 10. Against the backdrop of these court decisions, we must decide whether Arizona-
 18 American’s proposed hook-up fee tariff requires a fair value determination in a full rate case. Upon
 19 reconsideration of Decision No. 65800, we conclude that the proposed hook-up fee may be approved
 20 outside of the Company’s rate case application. There are several reasons for reaching this
 21 conclusion. First, no prior court decision has found that hook-up fees require a fair value
 22 determination and it is well settled that the Commission has broad discretion under its rate-making
 23 authority. *See, Simms v. Round Valley Light and Power Co.*, 80 Ariz. 145, 294 P.2d 378 (1956).
 24 More importantly, the funds received from the proposed hook-up fees will be separately recorded as
 25 CIAC and, therefore, Arizona-American will not be entitled to earn a return on the hook-up fees. As
 26 such, the hook-up fee funds are revenue requirement neutral and will not increase or decrease the

27 ¹ Approval of interim rates requires the existence of an emergency situation, the posting of a bond by the utility, and filing
 28 of a subsequent full rate case. *Rio Verde*, 199 Ariz. at 592; *See also, Scates v. Arizona Corp. Comm’n*, 118 Ariz. 531, 578
 P.2d 612 (App. 1978).

1 Company's revenues or expenses. As Staff points out, hook-up fees accounted for as CIAC are
2 analogous to funds received from main extension agreements with developers that are treated as
3 advances in aid of construction ("AIAC"). Since no fair value determination is made with respect to
4 AIAC funds, a fair value finding is not required for hook-up fees booked as CIAC. Finally, we
5 believe that administrative consistency will be advanced by approving the proposed hook-up fee tariff
6 in this docket. As noted above, hook-up fees have already been approved for a portion of Arizona-
7 American's Agua Fria District in the Verrado development. Hook-up fees and other revenue neutral
8 CIAC have also been approved without a fair value finding in other cases. *See, e.g., In re H2O, Inc.*,
9 Decision No. 63259 (December 14, 2000).

10 11. Given the fact that Staff has found Arizona-American's proposed hook-up fees to be
11 reasonable and in the public interest, we will approve the Company's tariff in this docket.

12 CONCLUSIONS OF LAW

13 1. Arizona-American Water Company, Agua Fria District, is a public service corporation
14 within the meaning of the Arizona Constitution and A.R.S. §§ 40-201, -250, -361, -365 and -367.

15 2. The Commission has jurisdiction over Arizona-American and the subject matter of the
16 application.

17 3. Pursuant to A.R.S. §40-252, the Commission has authority to amend a prior Decision.

18 4. Pursuant to Article XV, §§ 3 and 14 of the Arizona Constitution, setting hook-up fee
19 charges by approving tariffs is rate setting.

20 5. Under the circumstances of this case, and pursuant to Article XV, §§3 and 14 of the
21 Arizona Constitution, Arizona-American's proposed hook-up fee tariffs, which will be booked as
22 contributions in aid of construction, do not constitute rates that require a fair value determination prior to
23 approval.

24 ORDER

25 IT IS THEREFORE ORDERED that the proposed water and wastewater hook-up fee tariffs
26 for Arizona-American Water Company, Agua Fria Division, are approved.

27 IT IS FURTHER ORDERED that Arizona-American Water Company, Agua Fria Division,
28 shall treat all water and wastewater hook-up fees as non-refundable contributions in aid of

1 construction.

2 IT IS FURTHER ORDERED that, consistent with Decision No. 64307, Arizona-American
3 Water Company, Agua Fria Division, shall comply with Staff's recommendation to maintain all
4 water and wastewater hook-up fees in a separate interest bearing account, and to file annual reports in
5 accordance with Staff's recommendation.

6 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

7 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
8
9

10 CHAIRMAN

COMMISSIONER

COMMISSIONER

11
12 COMMISSIONER

COMMISSIONER

13
14 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
15 Secretary of the Arizona Corporation Commission, have
16 hereunto set my hand and caused the official seal of the
Commission to be affixed at the Capitol, in the City of Phoenix,
this ____ day of _____, 2003.

17
18 _____
19 BRIAN C. McNEIL
EXECUTIVE SECRETARY

20 DISSENT _____

21 DISSENT _____

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1 SERVICE LIST FOR: ARIZONA-AMERICAN WATER COMPANY
2 DOCKET NOS. SW-01303A-02-0628 and W-01303A-02-0629
3 Norman D. James
4 FENNEMORE CRAIG
5 3003 North Central Avenue, Ste. 2600
6 Phoenix, AZ 85012-2913
7 Ray Jones
8 Arizona-American Water Company
9 15626 North Del Webb Blvd.
10 Sun City, AZ 85351
11 Christopher Kempley, Chief Counsel
12 Legal Division
13 ARIZONA CORPORATION COMMISSION
14 1200 West Washington Street
15 Phoenix, AZ 85007
16 Ernest Johnson, Director
17 Utilities Division
18 ARIZONA CORPORATION COMMISSION
19 1200 West Washington Street
20 Phoenix, AZ 85007
21
22
23
24
25
26
27
28